



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**MAR 03 2005**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Cohen for New Hampshire  
John Buchalski, Treasurer  
P.O. Box 4217  
507 State Street  
Portsmouth, NH 03801

**RE: MUR 5646**  
**Cohen for New Hampshire, and**  
**John Buchalski, as treasurer**

**Dear Mr. Buchalski:**

On February 3, 2005, the Federal Election Commission found that there is reason to believe the Cohen for New Hampshire Committee ("Committee") and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 432(c), 439a(b), and 432(h), and knowingly and willfully violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Commission's regulations. These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in

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settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

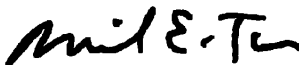
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



**Michael E. Toner  
Vice Chairman**

**Enclosures  
Factual and Legal Analysis  
Procedures  
Designation of Counsel Form**

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Cohen for New Hampshire and John Buchalski,  
in his official capacity as treasurer

**MUR 5646**

**I. GENERATION OF THE MATTER**

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

On June 10, 2004, Burton Cohen abruptly dropped out of the U.S. Senate race in New Hampshire reportedly due to "a campaign situation beyond his control." Beverley Wang, *Cohen Not Saying Why He Quit*, The Associated Press State & Local Wire, June 11, 2004 available at LEXIS, News & Business Library. News reports referred to accounts by campaign staff and others that a "significant" amount of campaign cash was missing and that the campaign manager had left town. *Id.* and *Campaign Money Missing*, The Union Leader (Manchester NH), June 12, 2004 at A1, available at LEXIS, News & Business Library. At a June 16, 2004 press conference, counsel hired by the Committee attributed Mr. Cohen's decision to drop out of the race in large part to "some concerns that have been raised in the past week about the accuracy and completeness of transactions disclosed" on reports the Committee had filed with the Commission. *Lawyer: Cohen, Campaign Victimized*, The Union Leader (Manchester NH), June 16, 2004 at A1, available at LEXIS, News & Business Library.

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1 Information obtained by the Commission provides a picture of events that led to Burton  
2 Cohen's withdrawal from the race and campaign manager Jesse Burchfield's departure.  
3 Committee Finance Director Ellen Stankiewicz, who began working full-time with the campaign  
4 in March 2004, had concerns about the campaign and Burchfield's performance and had  
5 numerous confrontations with him despite her relatively short tenure. Stankiewicz spoke with  
6 Cohen on June 3, 2004 about replacing Burchfield and contacted national finance director Kelly  
7 Bjorkland to search for a new campaign manager. An interview with a prospective applicant was  
8 scheduled for June 7, 2004. The evening before the interview, Stankiewicz brought the  
9 applicant's resume with her to a meeting with Cohen. Cohen has acknowledged that Burchfield  
10 was having problems managing some employees.

11 Burchfield's behavior around the time of these discussions suggests that he may have  
12 suspected his job was in jeopardy. On June 4, the day after Stankiewicz's first discussion with  
13 Cohen about replacing Burchfield, Burchfield disappeared from the office for hours, and he  
14 looked "somber" and "defeated" when he was in the office. On June 7, the day of the scheduled  
15 interview with Burchfield's potential replacement, Burton Cohen and others at the campaign  
16 received an e-mail from Burchfield stating that the campaign was broke and he was leaving to  
17 take a non-political job in Memphis, Tennessee. Following receipt of the e-mail, two campaign  
18 staffers went to Burchfield's apartment and found the door open and most of his belongings  
19 gone.

20 At Stankiewicz's urging, Cohen called the bank to check the balance of the Committee's  
21 accounts as of June 7, 2004 and learned that the accounts contained about \$15,000. Until then,  
22 Stankiewicz had believed the campaign had about \$350,000. The last Committee disclosure  
23 report filed prior to Burchfield's departure showed cash on hand of about \$397,000 as of

1 March 31, 2004.

2 Publicly available information and information obtained by the Commission in the  
3 ordinary course of carrying out its supervisory responsibilities indicates that there is reason to  
4 believe that Cohen for New Hampshire and John Buchalski, as treasurer ("the Committee")  
5 violated the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission  
6 regulations by misreporting the Committee's financial activity over the course of the 2004  
7 election cycle, primarily by significantly underreporting disbursements; underreporting  
8 contributions; by failing to maintain records of its disbursements; by using campaign funds to  
9 pay for personal expenses; by making excessive cash disbursements; and by using funds from  
10 Mr. Cohen's state campaign to pay for expenses related to Mr. Cohen's federal campaign with  
11 knowledge that doing so was improper.

12 **B. Committee's Misreporting & Failure to Maintain Disbursement Records**

13 The Committee's counsel notified the Commission in a June 23, 2004 letter responding  
14 to a Request for Further Information from the Reports Analysis Division that the Committee was  
15 in the process of "a thorough review" of its finances and reporting and would file necessary  
16 amendments thereafter. On July 15, 2004, counsel advised the Commission in a letter  
17 accompanying the 2004 July Quarterly Report that the review had uncovered a "significant  
18 discrepancy" in the Committee's previously reported cash on hand. The adjusted cash on hand  
19 figure of \$170,000 in that report was \$227,289 less than the end cash-on hand figure previously  
20 reported in the 2004 April Quarterly Report. Counsel described the adjusted figure as an  
21 approximation and said that the Committee's reports would be amended at the conclusion of the  
22 financial review, a process he described as "a reconstruction of certain transactions."

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1 More recently, on December 28, 2004, the Committee filed amendments to its 2004 April  
2 and July Quarterly Reports with an accompanying December 22, 2004 cover letter from  
3 Committee counsel indicating that the financial review of the Committee's transactions is  
4 ongoing. The amendments show that the end cash on hand as originally reported in the 2004  
5 April Quarterly indeed had been inflated but by \$51,851 rather than \$227,289. The amendments  
6 also reflect that disbursements had been underreported by about \$87,579 in the original 2004  
7 April Quarterly Report and by \$84,652 in the original 2004 July Quarterly Report.<sup>1</sup>  
8 Contributions had also been underreported by \$40,460 in the original 2004 April Quarterly  
9 Report.

10 The recently filed amendments confirm that the Committee filed inaccurate disclosure  
11 reports that significantly underreported its disbursements and underreported its contributions in  
12 calendar year 2004. Since counsel's December 22, 2004 cover letter indicates that additional  
13 amendments will be filed as necessitated by the Committee's ongoing financial review and no  
14 amendments have been filed for reports covering reporting periods in 2003, the extent of  
15 misreporting may be greater.

16 Jesse Burchfield has acknowledged that the Committee's finances were misreported since  
17 its first disclosure report, the 2003 April Quarterly Report, because certain expenses improperly  
18 paid for with leftover funds from Mr. Cohen's state campaign could not be reported. Burchfield  
19 alone prepared the Committee's reports and he has acknowledged that he purposely understated  
20 the Committee's expenditures in the 2003 July Quarterly Report and the reports filed thereafter

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<sup>1</sup> The original 2004 July Quarterly Report was filed after Burchfield left the Committee but covers a time period during which Burchfield had primarily managed the campaign and its finances. The Committee also filed an amendment to the 2004 October Quarterly Report on December 28, 2004 that indicates disbursements during that reporting period had been initially underreported by \$84,294.

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1 to make it appear that the Committee had more cash on hand than it did. He identified the  
2 greatest understatement of expenses as occurring in the 2003 Year End Report, which resulted in  
3 the Committee's cash-on-hand being overstated by close to \$300,000.<sup>2</sup>

4 Burton Cohen and former Committee staffers have confirmed that Burchfield was  
5 responsible for filing reports with the Commission. Although John Buchalski is listed as the  
6 Committee's treasurer in its Statement of Organization, Burton Cohen has stated that Buchalski,  
7 a war veteran, was treasurer "in title only." Cohen asked Buchalski to serve as treasurer to have  
8 a veteran involved in the campaign and said his only function was to sign the Committee's  
9 disclosure reports. Buchalski confirmed this limited role in news accounts, stating that he had no  
10 professional financial background, handled no campaign money, and sometimes signed reports  
11 that were only partially complete. *Lawyer: Cohen, Campaign Victimized, supra.*<sup>3</sup> Buchalski  
12 admitted that he signed the Committee's reports but opined in the press that his signature was  
13 forged on a letter and two reports filed with the Commission. the 2004 April Quarterly and the  
14 2003 October Quarterly. *See Cohen Aide Believes Signature Forged, The Union Leader*  
15 *(Manchester NH), June 18, 2004 at A12, available at LEXIS, News & Business Library. Indeed,*  
16 *information in the Commission's possession indicates that Jesse Burchfield signed the*  
17 *Committee's original and amended 2004 April Quarterly Reports using Buchalski's name.*

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<sup>2</sup> Burchfield has identified the "fourth quarter 2003" report (the 2003 Year End Report) as the one containing the largest understatement of expenses, resulting in an overstated cash-on-hand of about \$300,000 when the true cash on hand was about \$100,000. However, the original and amended 2003 Year End Reports reflected cash-on-hand figures of \$247,107 and \$242,375, respectively. If the actual cash balance was about \$100,000 at year-end as Burchfield said, the overstatement in the 2003 Year End Reports would have been between \$142,000-\$147,000 not close to \$300,000. In light of the fact that the 2003 Year End Report has not been amended since the Committee began its financial review, Burchfield's memory may prove to be accurate.

<sup>3</sup> Buchalski also stated that he had been told by an unidentified person to expect to sign blank forms that campaign aides would complete. *Report: Cohen's Manager Hired Lawyer, The Union Leader (Manchester, NH), June 23, 2004 at A8, available in LEXIS, News & Business Library.*

1 In addition to preparing the Committee's disclosure reports and signing John Buchalski's  
2 name to the 2004 April Quarterly Reports, Burchfield performed other finance-related duties.  
3 No one could spend funds without Burchfield's approval. He controlled the checkbook, the bank  
4 statements, the use of the Committee's ATM and debit card and he alone possessed the Personal  
5 Identification Number ("PIN") necessary to use the card's ATM function. He also deposited  
6 contributions and prepared checks to pay the campaign's expenses for Cohen's signature because  
7 Cohen was the sole signatory on the Committee's bank accounts. Cohen's status as sole account  
8 signatory should have been a check on Burchfield's control of the Committee's expenditures, but  
9 Burchfield admitted that he routinely signed Cohen's name on checks without his authorization.  
10 Cohen was aware of at least one check where someone else apparently signed his name, and he  
11 has acknowledged that he signed several blank checks at Burchfield's insistence prior to leaving  
12 on a trip to Washington D.C. in May 2004.

13 Other information in the Commission's possession provides additional confirmation of  
14 misreporting. According to Ellen Stankiewicz, copies of Committee bank account statements  
15 obtained after Burchfield left the campaign listed checks that were not reported in the  
16 Committee's disclosure reports. Committee Field Director Paul Dunn said that he and others  
17 reviewed the Committee's 2004 April Quarterly Report and its bank statements after receiving  
18 Burchfield's departing e-mail and noted a \$300,000 discrepancy between the nearly \$400,000  
19 ending cash on hand in the 2004 April Quarterly Report and the bank account balances of about  
20 \$100,000.

21 Burchfield told no one of the differences between the Committee's finances as reported  
22 and its true financial status. Indeed, Burchfield may have tried to conceal the misreporting from  
23 others in the campaign. According to Burton Cohen, at one point, the Committee's Assistant

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1 Finance Director Sharon Valdez requested the bank statements to prepare a reconciliation, but  
2 Burchfield refused to provide them.

3 In addition to the Committee's misreporting of its finances, Mr. Burchfield has  
4 acknowledged that the Committee did not keep records of its disbursements. The Committee's  
5 2004 July Quarterly Report, filed after Burchfield's departure, demonstrates the lack of  
6 recordkeeping. That report included about \$122,000 in disbursements that contained no address  
7 or purpose or inadequate purposes such as "information requested" and "expenses."<sup>4</sup> The  
8 missing information and the fact that the Committee apparently had to request information from  
9 payees reflects the failure to maintain records. As noted earlier, the 2004 July Quarterly Report  
10 has been amended, but not all of the missing information has been provided.

11 **Liability for Misreporting and Recordkeeping Violations**

12 The Act requires every political committee to have a treasurer. 2 U.S.C. § 432(a). No  
13 expenditure shall be made for or on behalf of a political committee without the authorization of  
14 the treasurer or his or her designated agent. *Id.* A principal campaign committee of a candidate  
15 shall file a Statement of Organization that includes the name and address of the treasurer of the  
16 committee and the name, address, and position of the custodian of the committee's books and  
17 accounts. 11 C.F.R. § 102.2(a)(1).

18 The Act also imposes reporting obligations on committee treasurers. Each treasurer of a  
19 political committee shall file reports of receipts and disbursements in accordance with the  
20 provisions of 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports  
21 shall include, *inter alia*, the amount of cash on hand at the beginning and end of a reporting

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<sup>4</sup> These facts also serve as an additional basis for pursuing violations of 2 U.S.C. § 434(b).

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1 period, the total amount of receipts and disbursements, the identification of each person who  
2 makes a contribution in excess of \$200 in an election cycle, and the name and address of each  
3 person to whom an expenditure exceeding \$200 is made together with the date, amount and  
4 purpose of the expenditure. *See* 2 U.S.C. § 434(b). Committee treasurers and any other person  
5 required to file any report or statement under the Commission's regulations and under the Act,  
6 shall be personally responsible for the timely and complete filing of the report or statement and  
7 for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d).

8 Committee treasurers also have recordkeeping obligations. Among them, a treasurer  
9 must keep an account of the name and address of every person to whom a disbursement is made,  
10 together with the date, amount and purpose of the disbursement. 2 U.S.C. § 432(c)(5). In  
11 addition, for each disbursement in excess of \$200 by or on behalf of the Committee, the treasurer  
12 shall obtain and keep a receipt, invoice or cancelled check. *Id.* and 11 C.F.R. § 102.9(b)(2).

13 As discussed, *supra*, the Committee, through Burchfield who prepared the Committee's  
14 disclosure reports and controlled its disbursements and Buchalski, the designated treasurer who  
15 was responsible for ensuring the accuracy of the reports, failed to accurately and completely  
16 report its disbursements and cash on hand beginning with the 2003 April Quarterly through the  
17 2004 July Quarterly Report and failed to maintain disbursement records. Therefore, there is  
18 reason to believe that Cohen for New Hampshire and John Buchalski, in his official capacity as  
19 treasurer, violated 2 U.S.C. §§ 434(b) and 432(c).

20 **C. Personal Use of Campaign Funds/Excessive Cash Disbursements**

21 The Act prohibits any person from converting contributions to a Federal candidate for  
22 personal use. 2 U.S.C. § 439a(b)(1). "Personal use" means any use of funds in a campaign  
23 account of a federal candidate to fulfill a commitment, obligation or expense of any person that

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1 would exist irrespective of the candidate's campaign duties. 11 C.F.R. § 113.1(g). The term  
2 "person" includes individuals and committees.

3 Jesse Burchfield has acknowledged that he used campaign funds to pay for personal  
4 expenses, chiefly through use of the Committee's ATM/debit card. He has admitted that he  
5 used the Committee's bankcard to withdraw about \$300 in cash on a vacation in New Orleans  
6 and may have withdrawn about \$600 in campaign cash to use on a trip to San Francisco with  
7 family members in December 2003. In addition, Burchfield has admitted that he used the debit  
8 function of the bankcard to pay for a personal website subscription in an unspecified amount.  
9 Campaign funds were also used to benefit others such as the purchase of a bed for campaign  
10 staffer Jeremy Fielder in August 2003.

11 Burton Cohen has corroborated Burchfield's use of campaign funds for personal  
12 expenses. Mr. Cohen was aware that Burchfield used the Committee's bankcard to purchase  
13 "Internet porn." He also believed that Burchfield used the bankcard for other personal expenses,  
14 including a rental car during a trip to California in March or April 2004.

15 In addition to these specific instances of personal use, Burchfield also appears to have  
16 made significant cash withdrawals, some of which may have been used to pay other personal  
17 expenses. The Committee's bank statements apparently reflected many cash withdrawals of  
18 \$1,000 each, including about \$9,000 in ATM withdrawals. ATM withdrawals totaling \$500 are  
19 also documented in the Committee's 2004 July Quarterly Report, which was filed after  
20 Burchfield's departure but covers the time period when he managed the campaign. As noted  
21 earlier, Burchfield was the only campaign staffer who had the bankcard PIN that permitted ATM  
22 withdrawals.

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1 Burchfield has offered two explanations for the ATM cash withdrawals: he used cash to  
2 pay for some personal expenses as previously described, and he used cash to purchase stamps for  
3 the campaign and pay the salaries of college students working for the campaign. Burchfield has  
4 characterized his use of ATM withdrawals to pay personal expenses as a way to make up the  
5 difference between his full monthly salary and the salary he actually paid himself. According to  
6 Burchfield, his salary was \$6,000 per month plus a \$1,000 housing stipend, an amount paid  
7 directly to Burchfield's housing provider.<sup>5</sup> He estimated that in the first five months of 2004 he  
8 received between \$25,000-\$26,000 in salary payments rather than the \$30,000 presumably owed  
9 to him, and made approximately \$600 in ATM withdrawals. He did not tell Cohen that he was  
10 taking less than his full salary.

11 Other information in the Commission's possession conflicts with Burchfield's description  
12 of his salary. Burton Cohen has stated that Burchfield's most recent salary for work on the  
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<sup>5</sup> The Committee's disclosure reports reflect about \$13,700 in payment to third parties for rent for both the Burchfield and the finance director. Burchfield has said that the Committee also gave a housing stipend to other campaign staffers. The Committee's payment of its staff's housing costs could be viewed as personal use of campaign funds since presumably the staffers would have incurred housing costs irrespective of Cohen's campaign. See Advisory Opinion ("AO") 1985-42 (campaign's payment of partial rent of candidate's apartment used by staff on trips to Washington for campaign business is not personal use but may be if apartment is provided for staff visits to D.C. for reasons other than campaign activities). AO 1985-42 was superseded by AO 1995-8 to the extent it permitted payment for a *candidate*-owned apartment in light of amendments to the personal use regulations in 1995. See also Explanation and Justification for Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7864 (final rules apply to personal use of campaign funds "regardless of whether the beneficiary is the candidate, a family member of a candidate or some other person.")

On the other hand, the campaign's payment of rent for certain campaign staffers has been referred to as a stipend by Stankiewicz and Burchfield, a characterization that connotes it was part of a compensation package. Moreover, neither Burchfield nor Stankiewicz appear to have been residents of New Hampshire prior to their work on Cohen's campaigns so, arguably, neither would have required living arrangements in New Hampshire in the absence of Cohen's campaign. Additional information will be obtained to determine whether these payments for rent constituted personal use of campaign funds.

1 federal campaign was \$5,000 a month plus a \$1,000 housing stipend that covered his rental  
2 apartment. If Cohen's statement is accurate, then Burchfield did receive his full salary based on  
3 Burchfield's estimation that he was paid between \$25,000-\$26,000 in 2004. Any campaign  
4 funds spent by Burchfield for personal expenses under these facts constituted personal use. The  
5 Committee's disclosure reports reflect still another salary figure for Burchfield. They show  
6 \$21,000 in salary payments made to Burchfield between January and June 4, 2004, an average of  
7 \$4,200 per month, tending to corroborate Burchfield's statement that he did not receive his full  
8 salary, whether it was \$5,000 per month as Cohen has stated or \$6,000 per month as Burchfield  
9 has maintained. The disclosure reports, however, are admittedly inaccurate.

10 In light of the use of the Committee's bankcard to pay for the personal expenses of  
11 Committee staff, the discrepancies concerning the level of Burchfield's salary and the extent  
12 to which he received his full salary, and the multiple cash withdrawals reflected in the  
13 Committee's disclosure reports and bank statements, there is reason to believe that the  
14 Committee, and John Buchalski, in his official capacity as treasurer, violated 2 U.S.C. § 439a(b).

15 In addition, the use of cash withdrawals to pay for student salaries and postage supports  
16 an inference that the Committee also violated 2 U.S.C. § 432(h) by making excessive cash  
17 disbursements. That provision requires political committees to make disbursements by check  
18 except for disbursements of \$100 or less from a petty cash fund. 2 U.S.C. § 432(h). Burchfield  
19 has not quantified the amounts he withdrew to buy stamps and pay student salaries, but the  
20 Committee's 2004 April Quarterly Report reflects multiple disbursements to the U.S. Post Office

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1 in amounts exceeding \$100.<sup>6</sup> Therefore, there is reason to believe that the Cohen for New  
2 Hampshire and John Buchalski, in his official capacity as treasurer, violated 2 U.S.C. § 432(h).

3 **C. Use of Non-Federal Funds to Pay for Federal Campaign Activity**

4 The Act, as amended by the Bipartisan Campaign Reform Act of 2002, prohibits a federal  
5 candidate; a candidate's agent; and entities directly or indirectly established, financed,  
6 maintained or controlled by, or acting on behalf of, a candidate from soliciting, receiving,  
7 directing, transferring or spending funds in connection with a Federal election unless the funds  
8 are subject to the limitations, prohibitions and reporting requirements of the Act. 2 U.S.C.  
9 § 441i(e)(1)(A). Moreover, Commission regulations specifically prohibit transfers of funds or  
10 assets from a candidate's account for a non-federal election to his or her principal campaign  
11 committee for a federal election. 11 C.F.R. § 103.3(d). Both provisions are designed to prevent  
12 the use in federal campaigns of funds raised outside the limits and prohibitions of the Act and to  
13 ensure that funds used in federal elections are reported.

14 New Hampshire state law permits individuals and political committees to make  
15 contributions of up to \$1,000 to a candidate who has not agreed to voluntarily limit campaign  
16 expenditures. N.H. Rev. Stat. Ann. §664:4, V. Corporations are also permitted to contribute  
17 within that limit based on a 1999 U.S. District Court decision ruling that New Hampshire's  
18 prohibition on corporate contributions was unconstitutional. *See Kennedy v. Gardner*, 1999 WL  
19 814273 (D.N.H. Sep 30, 1999) (No. CV 98-608-M) and Opinion Letter dated June 6, 2000 from  
20 Deputy Attorney General to William M. Gardner, Secretary of State, at  
21 <http://www.sos.nh.gov/political%20page.htm>. The New Hampshire Secretary of State's Office

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<sup>6</sup> Those disbursements, all to the U.S. Post Office for unreported purposes are: \$555 on January 3, 2004;  
\$111 on January 16, 2004; \$111 on February 4, 2004; \$222 on February 18, 2004; and \$370 on March 9, 2004.

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1 has advised us that Cohen did not agree to limit campaign expenditures in his 2002 state senate  
2 election.

3 According to Jesse Burchfield, leftover funds from Burton Cohen's state senate campaign  
4 were used to pay for expenses related to Cohen's federal campaign and Burton Cohen signed all  
5 of the checks written on the state campaign account(s). He specifically identified two instances  
6 in which state funds were used to pay for federal campaign expenses: payment(s) to  
7 Cunningham, Harris & Associates, a consulting firm, and the purchase of office furniture used  
8 by the Committee. Indeed, Burchfield has attributed the Committee's initial misreporting to the  
9 fact that state campaign funds were improperly used to pay for federal campaign expenses, and  
10 thus, could not be reported.

11 Ellen Stankiewicz has confirmed that state campaign funds were used to pay for federal  
12 election expenses, although she identified the state-financed expenses as consisting chiefly of  
13 salary payments. As part of her research into Burchfield's activities after his resignation,  
14 Stankiewicz learned that state campaign funds were used to pay Burchfield's and Sharon  
15 Valdez's salaries for duties related to the federal campaign and Burchfield's housing stipend.

16 State campaign disclosure reports, signed by Cohen, lend support to Stankiewicz's  
17 statement that state funds were used to pay Burchfield and Valdez's federal campaign salaries  
18 and housing costs.<sup>7</sup> The state campaign reports reflect a \$35,000 surplus following Cohen's  
19 November 5, 2002 reelection to the state senate. From this surplus, the campaign reported  
20 \$12,750 in "staff" payments to Burchfield and Valdez and an \$1,800 payment to a third party for

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<sup>7</sup> New Hampshire state law requires candidates for state office who make expenditures exceeding \$500 to file and sign statements of receipts and expenditures together with the candidate's designated fiscal agent. N.H. Rev. Stat. Ann. §§ 664:7 and 664:12. Candidates are not required to set up a separate political committee, and, according to the New Hampshire Secretary of State's Office, Burton Cohen did not do so in 2002.

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1 "rental space" between November 15, 2002 and January 31, 2003.<sup>8</sup> Although some of the  
2 earlier payments to Burchfield could have been for his work as Cohen's state campaign manager  
3 during the campaign and as the campaign wound up its activities, Cohen had publicly announced  
4 that he would explore a bid for the U.S. Senate as early as December 4, 2002. See *Campaigns of*  
5 *2004 New Hampshire Senate: Never Take the Underdog for Granite*, The Hotline, December 5,  
6 2002, available at Westlaw, 12/5/2002 APN-HO 22. Viewing the timing of the payments  
7 together with Stankiewicz's statement, it is likely that, at a minimum, staff and rent payments of  
8 \$8,050 made in January 2003 were in connection with Cohen's federal election.<sup>9</sup>

9 As for Burchfield's statements that state funds were used to pay for consulting services  
10 and furniture for the federal campaign, the state campaign reports do not reflect payments to  
11 Cunningham, Harris & Associates or any payments for furniture. However, Cunningham, Harris  
12 & Associates did serve as a fundraising consultant to the federal campaign as illustrated by a  
13 number of reported disbursements to them appearing in the Committee's 2003 April Quarterly  
14 Report. If surplus state campaign funds were used to pay Cunningham, Harris & Associates and  
15 to buy furniture, then two scenarios are possible: either the state campaign reports do not  
16 accurately reflect to whom disbursements were made, or the state campaign received unreported  
17 contributions that were then used to pay federal expenses.

18 New Hampshire's individual contribution limits are below the Act's limits and Cohen's  
19 state reports reveal no corporate contributions so it is possible that the state funds used in the  
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<sup>8</sup> The payment for rental space was made to John Hoyt, the same person to whom the Committee later made disbursements for "rent - finance director." Also, the relevant state report appears to mistakenly list the wrong year for the November payments. It reflects payments made on dates in November 2003, but the report itself was filed on May 5, 2003.

<sup>9</sup> Burton Cohen filed a Statement of Candidacy for the 2004 U.S. Senate race on January 16, 2003.

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1 federal campaign may have consisted of permissible funds under the Act. Nevertheless, none of  
2 the funds were subject to the Act's reporting provisions as required by Section 441i(e)(1)(A),  
3 and in any case, 11 C.F.R. § 110.3(d) flatly prohibits a candidate's state campaign from  
4 transferring funds to the candidate's federal campaign. Moreover, given Burchfield's statement  
5 that state funds were used to pay for expenses that are not reflected in the state campaign reports,  
6 we cannot be sure the reports accurately list all contributions received and disbursements made  
7 by the state campaign.

8 Based on information currently in the Commission's possession, it appears that state  
9 funds were used to pay for federal election expenses with checks drawn on a state campaign  
10 account(s). A candidate who receives a contribution or makes a disbursement in connection with  
11 his election to Federal office is considered to have received the contribution or made the  
12 disbursement as an agent of his authorized committee. 2 U.S.C. § 432(e)(2). Burton Cohen  
13 signed all checks drawn on the state campaign account(s). Thus, the Committee (an entity  
14 established by the candidate), through Cohen, spent funds in connection with Cohen's federal  
15 election that were not subject to the limitations, prohibitions and reporting requirements of the  
16 Act. It also effectively received nonfederal funds from Cohen's state campaign. See conciliation  
17 agreement in MUR 4974 (Tiberi for Congress)(candidate's federal and state committees violated  
18 11 C.F.R. § 110.3(d) when his state committee made a contribution to, and incurred expenses on  
19 behalf of, his federal committee).

20 The use of state funds in Cohen's U.S. Senate campaign also appears to have been  
21 knowing and willful. Burchfield told Cohen that state funds could not be used in a federal  
22 campaign after receiving advice on that issue from a Committee consultant. Cohen, the  
23 Committee's agent for purposes of making disbursements in connection with his federal election.

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- 1    apparently "downplayed" Burchfield's advice with a "humorous remark" and wrote checks**
- 2    drawn on the state campaign account(s) to pay for federal campaign expenses anyway.**
- 3    Accordingly, there is reason to believe that the Cohen for New Hampshire and John Buchalski,**
- 4    in his official capacity as treasurer, knowingly and willfully violated 2 U.S.C. § 441i(e)(1)(A)**
- 5    and 11 C.F.R. § 110.3(d).**

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